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DYKAS, SHAVER & NIPPER, LLP			BOCHNA, DAVID	
P.O. BOX 877				
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES KENNETH MCALPINE

Appeal 2008-2350
Application 10/785,581
Technology Center 3600

Decided: June 26, 2008

Before CATHERINE Q. TIMM, ROMULO H. DELMENDO, and
JEFFREY T. SMITH, *Administrative Patent Judges*.

TIMM, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's
decision rejecting claims 1-13 and 15. We have jurisdiction under 35 U.S.C.
§ 6(b).

We AFFIRM.

I. BACKGROUND

The invention relates to a flexible piping connector, particularly for use in connecting a bath overflow to a bath waste water pipe. (Spec. 1, ¶¶ 2 and 3). The flexible piping connector includes a tubular flexible member and two flanking rigid tubular members. (Spec. 3, ¶ 7). The connector has a substantially smooth inner bore surface. (Spec. 3, ¶ 7). The flexible tubing member 12 has a central annular groove 14 formed around its circumference and a corresponding protrusion 16 formed inside, against which two annular members 28 abut. (Spec. 6-7, ¶¶ 25 and 28). Claims 1 and 15 are illustrative of the subject matter on appeal:

1. Bath overflow piping for connecting a bath overflow to a bath waste water pipe, the overflow piping comprising:

a flexible piping connector having a first end and a second end and comprising a tubular flexible member having a substantially smooth inner bore surface, the flexible piping connector further including at least one rib on a portion of an internal surface;

a pipe section connected at a first end with the first end of the connector, the pipe section being adapted to be connected at a second end to a bath waste water pipe; and

an overflow attachment adapted for connecting the second end of the connector to an overflow outlet on a bath.

15. Bath overflow piping for coupling a bath overflow outlet to bath waste outlet piping, the overflow piping comprising:

a flexible piping connector having a first end and a second end, and comprising a tubular flexible member having a substantially smooth internal surface, the tubular flexible member having an external surface defining an annular depression, and an internal surface defining an annular rib, the annular depression and the annular rib being at the same axial location, the

first end adapted for coupling to bath waste outlet piping and the second end being adapted for coupling to a bath overflow outlet.

Appellant requests review of the sole rejection maintained by the Examiner, namely, the rejection of claims 1-13 and 15 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,749,609, issued May 12, 1998 to James R. Steele (“Steele”).

Appellant argues claims 1-13 as a group and claim 15 under a separate heading. (App. Br. 5). Thus, we decide this ground of rejection on the basis of claims 1 and 15. *See* 37 C.F.R. § 41.37(c)(1)(vii).

II. DISCUSSION

Based on a dictionary definition provided by Appellant, Appellant argues that a proper construction of the term “rib” is “a portion of an entire body or device which is proportionately smaller or more narrow than the body of the entire piece.” (App. Br. 4-5, ¶¶ 8-10). Appellant argues that the inner portion of Steele, relied upon by the Examiner, includes no such rib and the Examiner’s finding is “wholly inconsistent with the use of the word rib in common language as well as the use of this word within the Steele patent itself.” (App. Br. 5, ¶ 10). With respect to claim 15, Appellant further argues that “the smaller depressions in the outer surface [of Steele] do not each individually correspond to a projection in the inner surface so as to align along the same axis.” (App. Br. 5, ¶ 14).

The Examiner responds that “the raised portion 16a extending axially between bands 13a and 14a [sic, 13 and 14] of the structure in Steele constitutes a rib as it has been claimed by the Appellant.” (Ans. 5, ¶ 6). The Examiner discusses how portion 16a of Steele reads on the dictionary definition provided by Appellant and Appellant’s provided construction.

(Ans. 5-7, ¶¶ 8-9). Regarding claim 15, the Examiner also responds that claim 15 does not require that the depressions on the outer surface “each individually correspond to a projection in the inner surface.” (Ans. 8, ¶ 14). The Examiner also responds that Steele teaches that item 16a is provided at each point where there is an annular depression and that any one of the depressions is shown in Figure 1 aligned with the raised portion 16a extending axially between bands 13 and 14. (Ans. 8, ¶ 14).

The issues on appeal arising from the contentions of Appellant and the Examiner are: (1) did the Examiner reversibly err in finding that the term “rib” recited in claim 1 reads on the raised portion of surface 16a between bands 13 and 14 as taught by Steele; and (2) did the Examiner reversibly err in finding that “the annular depression and the annular rib being at the same axial location” as recited in claim 15 reads on the structure described in Steele? We answer both of these questions in the negative.

Claim Construction¹

During examination, “claims . . . are to be given their broadest reasonable interpretation consistent with the specification, and . . . claim language should be read in light of the specification as it would be

¹ We find that Appellant’s Specification is inconsistent with the language of claims 1 and 15, i.e., the “flexible piping connector” has a “substantially smooth inner bore surface” (Spec. ¶ 7), and the “tubular member” includes “a corresponding protrusion 16 formed inside the member.” (Spec. ¶ 25). For the purpose of applying the prior art, we have construed the claims as the Appellant and the Examiner do: “the flexible piping connector has a first end and a second end, a tubular flexible member with a substantially smooth inner bore surface and at least one rib on a portion of an internal surface.” (App. Br. 4, ¶ 4; Ans. 5, ¶ 4). We are utilizing this claim construction in rendering our decision. We will not address whether rejections under 35 U.S.C. § 112 are appropriate.

interpreted by one of ordinary skill in the art." *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The Specification is always highly relevant. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005). “[I]n those circumstances where reference to dictionaries is appropriate, the task is to scrutinize the intrinsic evidence in order to determine the most appropriate definition.” *Free Motion Fitness, Inc. v. Cybex Intern., Inc.*, 423 F.3d 1343, 1348 (Fed. Cir. 2005)(citing *Phillips*, 415 F.3d at 1322-23, 1324).

Appellant argued that “the rib is the item designated as number 16 in Fig. 4 of the application as filed.” (App. Br. 4, ¶ 5). We note that Appellant’s Specification does not use, and provides no guidance as to the meaning of, the word “rib,” but rather refers to a “protrusion 16” generally. (Spec. 7-8, ¶¶ 25 and 28). We note that a “protrusion” must be smaller or more narrow than the body from which it protrudes. However, we find no reason in the Specification, the dictionary definition, or Appellant’s implied definition to limit the term “rib” to any particular size, shape or narrowness of a protrusion, as suggested by Appellant. (App. Br. 4, ¶ 8-9). Thus, the broadest reasonable interpretation of the term “rib” in claims 1 and 15 requires no particular size, shape or narrowness with respect to the body from which it protrudes.

We note that the language of claim 15 merely recites “the annular depression and the annular rib being at the same axial location.” We also note that claim 15 only calls for “an annular depression” and “an annular rib.” Appellant’s Specification does not use, and provides no guidance as to the meaning of, the phrase “the annular depression and the annular rib being

at the same axial location.” (Spec.) Rather, the Specification merely refers to “a protrusion 16” as “corresponding” to “the annular groove 14.” (Spec. 6-7, ¶ 25). Likewise, Figure 4 of the Specification illustrates only one protrusion 16 and only one annular groove 14. (Spec., Figure 4). Thus, the broadest reasonable interpretation of the phrase “being at the same axial location” is that *an* annular groove and *an* annular rib must correspond at *an* axial location.

Anticipation of Claim 1-13

In order to find anticipation, “the Board must compare the construed claim to a prior art reference and make factual findings that ‘each and every limitation is found either expressly or inherently in [that] single prior art reference.’” *In re Crish*, 393 F.3d 1253, 1256 (Fed. Cir. 2004)(quoting *Celeritas Techs. Ltd. v. Rockwell Int'l Corp.*, 150 F.3d 1354, 1360 (Fed. Cir. 1998)).

Steele discloses that reinforcing bands 13 and 14 have inner surfaces 13a and 14a that are in substantial alignment with the interior surface 16a. (Steele, col. 3, ll. 1-5 and 20-25). Steele also states that “FIG. 1 and FIG. 3 illustrate the nature of the smooth junction between rigid reinforcing band 13 and surface 16a and rigid reinforcing band 14 and surface 16a.” (Steele, col. 3, ll. 35-37). Further, looking at Figures 1 and 3, it is clear that a raised portion of surface 16a protrudes from the connector between bands 13 and 14 such that the inner surface of reinforcing bands 13a and 14a are aligned with the raised portion of surface 16a. (Steele, Figures 1 and 3). Since the term “rib” requires no particular size, shape or narrowness of a protrusion, we find that it reads on the portion of surface 16a protruding between reinforcing bands 13 and 14.

The Examiner did not reversibly err in finding that claim 1 reads on surface 16a as taught by Steele. We sustain the Examiner's rejection of claim 1 in that we find each and every limitation of claim 1 is found in Steele.

Appellant has failed to set forth separate, substantive arguments for dependent claims 2-13. As such, dependent claims 2-13 fall with our decision above regarding independent claim 1.

Anticipation of claim 15

We apply the same analysis discussed above to the term "rib" in claim 15. Similarly, we find that Figures 1 and 3 of Steele illustrate that any one of the annular depressions corresponds to the raised portion of surface 16a between reinforcing bands 13 and 14 (i.e., the "rib"). Based on our claim construction above, the Examiner did not err in finding that "the annular depression and the annular rib being at the same axial location" as recited in claim 15 reads on the teachings of Steele. Since we find that each and every limitation of claim 15 is found in Steele, we sustain the Examiner's rejection of claim 15.

III. CONCLUSION

The totality of the evidence weighs in favor of finding that Steele anticipates claims 1-13 and 15 under 35 U.S.C. § 102(b).

IV. DECISION

The decision of the Examiner is affirmed.

V. TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal maybe extended under 37 C.F.R. § 1.136(a)(1)(iv).

Appeal 2008-2350
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AFFIRMED

PL initials:

sld

DYKAS, SHAVER & NIPPER, LLP
P.O. BOX 877
BOISE, ID 83701-0877